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Human Rights Committee

Communication No. 1874/2009

Views adopted by the Committee at its 109th session (14 October–1 November 2013)

Submitted by:	Rabiha Mihoubi, represented by Track Impunity Always (TRIAL)
Alleged victim:	Nour-Eddine Mihoubi (the author's son) and the author herself
State party:	Algeria
Date of communication:	4 March 2009 (initial submission)
Document reference:	Special Rapporteur's rule 97 decision, transmitted to the State party on 29 April 2009 (not issued in document form)
Date of adoption of Views:	18 October 2013
Subject matter:	Enforced disappearance
Procedural issue:	Exhaustion of domestic remedies
Substantive issues:	Right to life, prohibition of torture and cruel and inhuman treatment, right to liberty and security of person, respect for the inherent dignity of the human person, right to recognition as a person before the law and right to an effective remedy
Articles of the Covenant:	2 (para. 3), 6, 7, 9 (paras. 1 to 4), 10 and 16
Article of the Optional Protocol:	5 (para. 2 (b))

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Annex

Views of the Human Rights Committee under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights (109th session)

concerning

Communication No. 1874/2009*

Submitted by:	Rabiha Mihoubi, represented by Track Impunity Always (TRIAL)
Alleged victim:	Nour-Eddine Mihoubi (the author's son) and the author herself
State party:	Algeria
Date of communication:	4 March 2009 (initial submission)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 18 October 2013,

Having concluded its consideration of communication No. 1874/2009 submitted to the Human Rights Committee by Rabiha Mihoubi under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of the communication and the State party,

Adopts the following:

Views under article 5, paragraph 4, of the Optional Protocol

1.1 The author of the communication, which is dated 4 March 2009, is Rabiha Mihoubi, an Algerian citizen born on 13 March 1933. She claims that her son Nour-Eddine Mihoubi, an Algerian national born on 15 March 1962, is a victim of violations by Algeria of articles 2 (para. 3), 6, 7, 9, 10 and 16 of the Covenant. She also claims that she herself is a victim of

* The following members of the Committee took part in the consideration of this communication: Mr. Yadh Ben Achour, Ms. Christine Chanet, Mr. Ahmad Amin Fathalla, Mr. Cornelis Flinterman, Mr. Yuji Iwasawa, Mr. Walter Kälin, Ms. Zonke Zanele Majodina, Mr. Kheshoe Parsad Matadeen, Mr. Gerald L. Neuman, Sir Nigel Rodley, Mr. Victor Manuel Rodríguez-Rescia, Mr. Fabian Omar Salvioli, Ms. Anja Seibert-Fohr, Mr. Yuval Shany, Mr. Konstantine Vardzelashvili and Ms. Margo Waterval.

Pursuant to rule 90 of the Committee's rules of procedure, Committee member Mr. Lazhari Bouzid did not take part in the consideration of the present communication.

The text of the two individual opinions by Mr. Salvioli and Mr. Rodríguez-Rescia and by Mr. Neuman are appended to the present Views.

a violation of articles 2 (para. 3) and 7 of the Covenant. The author is represented by Track Impunity Always (TRIAL).

1.2 On 4 June 2009, the Committee, through its Special Rapporteur on new communications and interim measures, decided not to consider the admissibility and the merits of the case separately.

The facts as submitted by the author

2.1 At 4 p.m. on 27 January 1993, Nour-Eddine Mihoubi and his brother Hocine Mihoubi were arrested by local police officers at the latter's home in Diss (Bou Saâda). Hocine Mihoubi was released the following day. He immediately informed the author, who travelled to Bou Saâda without delay. She tried in vain to obtain information from the police but the officers claimed to know nothing about Nour-Eddine Mihoubi's arrest.

2.2 Nour-Eddine Mihoubi was initially held at the Bou Saâda police station. He was detained there for 11 days before being transferred to the police of the *wilaya* of Algiers. According to information that his family received in 1995 through former fellow inmates, he was then taken to the Châteauneuf detention centre, where he was allegedly held incommunicado for 18 months. The same sources claim that he was subjected to torture during his detention in Châteauneuf and that his health seriously deteriorated as a result. Thereafter his family was unable to ascertain his whereabouts and failed either to establish contact with him or to obtain any news about him from the Algerian authorities.

2.3 The author filed a complaint about her son's abduction with the public prosecutor in Bou Saâda. It was in connection with this complaint that, three and a half years after the disappearance of Nour-Eddine Mihoubi, on 22 July 1996, the assistant prosecutor of Bou Saâda expressly acknowledged that the Bou Saâda local police had indeed arrested Nour-Eddine Mihoubi and that he had been transferred to the custody of the police of the *wilaya* of Algiers on 7 February 1993. However, the investigations carried out at the request of the public prosecutor failed to come up with any indication as to where Nour-Eddine Mihoubi might be, what might have happened to him when he was in the custody of the security services, or why he had been arrested.

2.4 Nour-Eddine Mihoubi's father, Mohamed Mihoubi, also contacted the public prosecutor of Algiers to inform him of his son's abduction. In addition, he wrote to a number of national authorities who were in a position to provide assistance, including the President of the Republic and the Minister of Justice. On 21 October 1995, with no word from the authorities concerned, Mohamed Mihoubi again petitioned the public prosecutor of Algiers, the Minister of Justice and the President of the Republic, but these petitions also met with no response.

2.5 The Mihoubi family subsequently submitted a request to trace the victim to the National Human Rights Observatory (ONDH). The only response the family received was a letter dated 12 May 1996 in which they were informed that Nour-Eddine Mihoubi was wanted under prosecutor's arrest warrant No. 25/93 and investigating judge's arrest warrant No. 143/93, issued by the Special Court on 31 March 1993, that is, two months after his arrest.

2.6 On 16 January 2000, the local police of Bourouba sent an unsubstantiated summons to the author, asking her to present herself the following day at the headquarters of the Inspectorate-General of the Directorate-General of National Security in Algiers. It subsequently transpired that the intention was to take a statement from her, as the mother of the disappeared person, about her son's abduction and disappearance. The members of the family were never contacted again for the purpose of the inquiry and never received any indication that any form of investigation was actually under way.

2.7 When the National Advisory Commission for the Promotion and Protection of Human Rights was established to replace the National Human Rights Observatory, Nour-Eddine Mihoubi's family also petitioned this institution. The family's complaint was registered on 28 September 2002. This petition also failed to shed any light on the fate of the missing person.

2.8 Nour-Eddine Mihoubi's case was also referred to the Working Group on Enforced or Involuntary Disappearances, which asked the Government of Algeria to initiate a search for the victim. To date, however, the State party has failed to act upon this request or to shed any light on Nour-Eddine Mihoubi's case.

2.9 On 9 March 2006, the family began the process of obtaining an official declaration of death pursuant to Ordinance No. 06-01 of 27 February 2006 implementing the Charter for Peace and National Reconciliation, and the national gendarmerie of Bourouba in Algiers issued a certificate of disappearance for Nour-Eddine Mihoubi on 12 April 2007.

The complaint

3.1 The author maintains that her son was a victim of enforced disappearance, in violation of articles 2 (para. 3), 6 (para. 1), 7, 9 (paras. 1–4), 10 (para. 1) and 16 of the Covenant. The author also maintains that she herself is a victim of a violation of article 7, read alone and in conjunction with article 2 (para. 3), of the Covenant.

3.2 Nour-Eddine Mihoubi's arrest by agents of the State party was followed by a refusal to acknowledge his deprivation of liberty and the concealment of his fate. His prolonged absence and the circumstances and context of his arrest suggest that he died in custody. Invoking the Committee's general comment No. 6 (1982) on article 6, the author claims that incommunicado detention is highly likely to result in a violation of the right to life, since victims are at the mercy of their jailers who, by the very nature of the circumstances, are subject to no oversight. Even in the event that disappearance does not lead to the worst, the threat to the person's life at the time constitutes a violation of article 6, insofar as the State has failed in its duty to protect the fundamental right to life. That was compounded by the fact that no effort was made to conduct an investigation into Nour-Eddine Mihoubi's fate. The author therefore considers that the State party has violated article 6, read alone and in conjunction with article 2, paragraph 3, of the Covenant.

3.3 Referring to the Committee's jurisprudence, the author maintains that the mere fact of subjection to enforced disappearance constitutes inhuman or degrading treatment. Consequently, the anguish and suffering caused by Nour-Eddine Mihoubi's indefinite detention and complete lack of contact with his family or the outside world amount to treatment which is contrary to article 7 of the Covenant. In addition, Nour-Eddine Mihoubi is likely to have been subjected to torture in the Châteauneuf detention centre. All detainees who survived this centre have claimed to have been tortured, to have witnessed sessions of torture inflicted upon their fellow inmates and to have experienced a truly horrific ordeal. It therefore seems more than likely that Nour-Eddine Mihoubi, who was held there for over a year, suffered the same fate. Moreover, several prisoners who came into contact with him in the detention centre have informed his family that he suffered extreme abuse at the hands of his jailers that has to be classified as torture. They added that his health seriously deteriorated as a result of this abuse. The author also considers that her son's disappearance constituted and continues to constitute for herself and the rest of her family a paralysing, painful and distressing ordeal given that they know nothing of his fate or, if he is in fact dead, of the circumstances of his death and where he is buried. In view of the Committee's

jurisprudence on the issue,[1] the author concludes that the State party has also violated her rights under article 7, read alone and in conjunction with article 2, paragraph 3, of the Covenant.

3.4 The author notes that the authorities approached by the Mihoubi family denied holding the victim. It was not until July 1996 that the public prosecutor finally acknowledged Nour-Eddine Mihoubi's arrest and detention, albeit without providing his relatives with any information about his whereabouts or his fate. The family learned that he had been transferred to Châteauneuf detention centre through an unofficial, indirect source. Accordingly, the author submits that the State party has acted in violation of article 9, paragraph 1, of the Covenant, since Nour-Eddine Mihoubi was arrested on 27 January 1993 without a warrant and without being informed of the reasons for his arrest. No member of his family has seen him or been able to communicate with him since the release of his brother. He was not at any time informed of the criminal charges against him, in violation of article 9, paragraph 2. Moreover, he was not brought before a judge or other judicial authority, either at the start of the lawful period of police custody or when it ended. The document issued by the assistant prosecutor of the court of Bou Saâda does not mention that Nour-Eddine Mihoubi was brought before the prosecutor before being transferred to the custody of Algiers police, even though he had spent 11 days in police custody. In any event, recalling that incommunicado detention per se may constitute a violation of article 9, paragraph 3, the author concludes that this provision was violated in her son's case. In conclusion, as Nour-Eddine Mihoubi has been denied the protection of the law during the entire period of his indefinite detention, he has never been able to institute proceedings to contest the lawfulness of his detention or seek his release through the courts, in violation of article 9, paragraph 4, of the Covenant.

3.5 The author also maintains that, given his incommunicado detention, her son was not treated with humanity and with respect for the inherent dignity of the human person, in violation of article 10, paragraph 1, of the Covenant.

3.6 The author also claims that, as a victim of enforced disappearance, Nour-Eddine Mihoubi was denied the protection of the law, in violation of article 16 of the Covenant.

3.7 The author maintains that, since all the steps she took to ascertain her son's fate were fruitless, the State party did not fulfil its obligation to guarantee Nour-Eddine Mihoubi an effective remedy, since it should have conducted a thorough and effective investigation into his disappearance and should have kept the family informed of the results of its investigations. The absence of an effective remedy is compounded by the fact that a total and general amnesty was declared following the promulgation on 27 February 2006 of Ordinance No. 06-01 implementing the Charter for Peace and National Reconciliation, which prohibits, on pain of imprisonment, the pursuit of legal remedies to shed light on the most serious crimes, such as enforced disappearances, guaranteeing impunity to the individuals responsible for violations. This amnesty law is in breach of the State's obligation to investigate serious violations of human rights and of victims' right to an effective remedy. The author concludes that the State party has violated article 2, paragraph 3, of the Covenant with regard to herself and her son.

3.8 As to the exhaustion of domestic remedies, the author stresses that all her efforts and those of her family have been to no avail. The family repeatedly petitioned any institution that was in a position to help them, including the National Human Rights Observatory (which subsequently became the National Advisory Commission for the Promotion and Protection of Human Rights), the Minister of Justice and the President of the Republic.

[1] Communication No. 959/2000, *Bazarov v. Uzbekistan*, Views adopted on 14 July 2006, para. 8.5.

None of those institutions responded to their petitions, in spite of the judicial authorities' acknowledgement, in July 1996, that Nour-Eddine Mihoubi had indeed been arrested and detained by the Bou Saâda local police. Nour-Eddine Mihoubi's family has at all times acted with diligence, the author having duly responded to the summons addressed to her. However, the investigations have never managed to shed light on the fate of Nour-Eddine Mihoubi. The conclusions sent to his family are not only incomplete but also incongruous, since, according to the letter from the Observatory dated 12 May 1996, an arrest warrant had supposedly been issued for Nour-Eddine Mihoubi when at the time he had already been in the security forces' custody for two months. It must therefore be concluded, in the light of the foregoing, that all the appeals made by Nour-Eddine Mihoubi's family were futile and ineffective in that they were unable to give them satisfaction.

3.9 In addition, the author submits that she no longer has the legal right to take judicial proceedings since the promulgation of Ordinance No. 06-01 implementing the Charter for Peace and National Reconciliation. Not only did all the remedies sought by the author prove futile and ineffective, they are now also totally unavailable.

State party's observations

4.1 On 29 May 2009, the State party contested the admissibility of the communication in a "background memorandum on the inadmissibility of communications submitted to the Human Rights Committee in connection with the implementation of the Charter for Peace and National Reconciliation". The State party is of the view that communications incriminating public officials, or persons acting on behalf of public authorities, in enforced disappearances during the period in question, that is, from 1993 to 1998, should be considered in the context of the sociopolitical and security conditions that prevailed in the country during a period when the Government was struggling to combat terrorism.

4.2 During that period the Government was obliged to combat groups that were not formally organized. Consequently, there was some confusion in the manner in which a number of operations were carried out among the civilian population, and it was difficult for civilians to distinguish between the actions of terrorist groups and those of the security forces. There are numerous explanations for cases of enforced disappearance but, according to the State party, they cannot be blamed on the Government. Data documented by many independent sources indicate that the concept of disappearance in Algeria during the period in question covers six distinct scenarios, none of which can be blamed on the Government. The first scenario concerns persons reported missing by their relatives who had gone underground of their own accord in order to join an armed group and had asked their families to claim that they had been arrested by the security services as a way of "covering their tracks" and avoiding "harassment" by the police. The second scenario concerns persons who were reported missing after their arrest by the security services but used this situation as an opportunity to go underground upon their release. The third scenario concerns missing persons who had been abducted by armed groups but who, because their abductors were either not identified or had used uniforms or identification documents unlawfully obtained from police officers or soldiers, were incorrectly identified as being members of the armed forces or security services. The fourth scenario concerns persons who had actually taken the decision to leave their homes and in some cases also the country because of personal problems or family disputes. The fifth scenario concerns persons reported missing by their families who were actually wanted terrorists who had been killed and buried in the maquis following clashes between rival armed groups. Finally, the sixth scenario concerns persons reported missing who were in fact living in Algeria or abroad under false identities created via a vast network of document forgers.

4.3 The State party stresses that it was in view of the diversity and complexity of the situations covered by the concept of disappearance that the Algerian legislature, following

the referendum on the Charter for Peace and National Reconciliation, recommended a comprehensive approach to the issue of the disappeared under which the cases of all persons who had disappeared during the "national tragedy" would be considered, all victims would be offered support to help them to overcome the ordeal and all victims of disappearance and their beneficiaries would be entitled to redress. According to statistics prepared by the Ministry of the Interior, 8,023 disappearances have been reported and 6,774 cases have been considered, of which 5,704 have been approved for compensation, 934 have been rejected and 136 are pending a decision. A total of 371,459,390 Algerian dinars has been paid out in compensation to all the victims concerned. In addition, a total of 1,320,824,683 Algerian dinars has been paid out in monthly pensions.

4.4 The State party further argues that not all domestic remedies have been exhausted. The State party observes that, as may be seen from the author's statements, she has sent letters to political and administrative authorities, petitioned advisory and mediation bodies and submitted requests for assistance to representatives of the prosecution service but has not actually initiated legal proceedings and seen them through to their conclusion by availing herself of all available remedies of appeal and cassation. Of all these authorities, only the representatives of the prosecution service are authorized by law to open a preliminary inquiry and refer a case to the investigating judge. Under the Algerian legal system, it is the public prosecutors who receive complaints and institute criminal proceedings where these are warranted. However, in order to protect the rights of victims and their beneficiaries, the Code of Criminal Procedure authorizes the latter to sue for damages by filing a complaint with the investigating judge. In this case, it is the victim, not the prosecutor, who initiates criminal proceedings by bringing the matter before the investigating judge. This remedy, which is provided for in articles 72 and 73 of the Code of Criminal Procedure, has not been used, despite the fact that it would have enabled the victims to institute criminal proceedings and force the investigating judge to initiate an investigation, even if the prosecution service had decided otherwise.

4.5 The State party also notes the author's contention that the adoption by referendum of the Charter for Peace and National Reconciliation and its implementing legislation — in particular article 45 of Ordinance No. 06-01 — makes it impossible to maintain that there exist effective and available domestic remedies in Algeria to which the families of victims of disappearance might have recourse. On this basis, the authors believed they were under no obligation to bring the matter before the relevant courts, thereby prejudging the courts' position and findings in respect of the application of the Ordinance. However, the authors cannot invoke this Ordinance and its implementing legislation as a pretext for failing to institute the legal proceedings available to them. The State party recalls the Committee's jurisprudence to the effect that a person's subjective belief in, or presumption of, the futility of a remedy does not exempt that person from the requirement to exhaust all domestic remedies.[2]

4.6 The State party then turns its attention to the nature, principles and content of the Charter for Peace and National Reconciliation and its implementing legislation. It stresses that, in accordance with the principle of the inalienability of peace, which has become an international right to peace, the Committee should support and consolidate peace and encourage national reconciliation so that States affected by internal crises can rebuild. The State party adopted the Charter as part of this national reconciliation effort, and its implementing Ordinance establishes legal measures for the discontinuance of criminal proceedings and the commutation or remission of sentences for any person who is found

[2] The State party cites communication No. 210/1986 and communication No. 225/1987, *Pratt and Morgan v. Jamaica*, Views adopted on 6 April 1989.

guilty of acts of terrorism or who benefits from the provisions of the legislation on civil dissent, except for persons who have committed or been accomplices in mass killings, rapes or bombings in public places. The Ordinance also prescribes measures to help address the issue of disappearances by introducing a procedure for filing a judicial declaration of death, which entitles beneficiaries to receive compensation as victims of the "national tragedy". Social and economic measures have also been put in place, including the provision of assistance with finding a job or compensation for all persons considered victims of the "national tragedy". Lastly, the Ordinance prescribes political measures: these include a ban on holding political office for any person who exploited religion in the past in a way that contributed to the "national tragedy", and declaring inadmissible any proceedings brought against individuals or groups who are members of any branch of Algeria's defence and security forces for actions undertaken to protect persons and property, safeguard the nation and preserve the institutions of the Republic.

4.7 The sovereign people of Algeria have, according to the State party, agreed to a process of national reconciliation as the only way to heal the wounds inflicted. The proclamation of the Charter for Peace and National Reconciliation reflects a desire to avoid confrontation in the courts, media outpourings and political score settling. The State party is therefore of the view that the author's allegations are covered by the comprehensive domestic settlement mechanism provided for in the Charter.

4.8 The State party asks the Committee to note the similarities between the facts and situations described by authors, and between the sociopolitical and security contexts in which they occurred; to note that the authors have failed to exhaust all domestic remedies; to note that the authorities of the State party have established a comprehensive domestic mechanism for processing and settling the cases referred to in these communications through measures designed to achieve peace and national reconciliation that are consistent with the principles of the Charter of the United Nations and subsequent covenants and conventions; to find these communications inadmissible; and to request that authors seek the appropriate remedy.

The author's comments on the State party's submission

5.1 In her comments of 25 April 2013, the author considers that the State party's adoption of domestic legislative and administrative measures to support the victims of the "national tragedy" cannot be invoked at the admissibility stage to prohibit individuals subject to its jurisdiction from using the procedure provided for under the Optional Protocol. In the case in point, the legislative measures adopted are themselves a violation of the rights enshrined in the Covenant, as the Committee has previously observed.[3]

5.2 The author recalls that Algeria's declaration of a state of emergency on 9 February 1992 does not affect people's right to submit individual communications to the Committee. The author therefore considers that the State party's observations on the appropriateness of the communication do not constitute a ground for inadmissibility.

5.3 As to the State party's argument that the requirement to exhaust domestic remedies calls on the author to institute criminal proceedings by filing a complaint with the investigating judge, in accordance with articles 72 ff. of the Code of Criminal Procedure, the author refers to the Committee's jurisprudence,[4] and considers that, given the serious

[3] Concluding observations of the Human Rights Committee, Algeria, CCPR/C/DZA/CO/3, (12 December 2007), paras. 7, 8 and 13. Communication No. 1588/2007, *Daouia Benaziza v. Algeria*, Views adopted on 26 July 2010, para. 9.2; and concluding observations of the Committee against Torture, Algeria, CAT/C/DZA/CO/3, 16 May 2008, paras. 11, 13 and 17.

[4] Communication No. 1588/2010, *Benaziza v. Algeria*, Views adopted on 27 July 2010, para. 8.3.

nature of the alleged offences, the fact that the family did not sue for damages cannot be invoked as a means to offset the lack of the criminal proceedings that should have been initiated by the State party on its own initiative. Both the judicial and the government authorities were informed of the disappearance of Nour-Eddine Mihoubi but the circumstances surrounding his disappearance, as well as his current whereabouts, remain unknown. The State party has not fulfilled its duty to investigate and establish the facts about all serious violations of human rights.

5.4 As to the State party's argument that mere "subjective belief or presumption" does not exempt the author of a communication from the requirement to exhaust all domestic remedies, the author cites articles 45 and 46 of Ordinance 06-01. The State party has not convincingly demonstrated how suing for damages would have enabled the competent courts to receive and investigate the complaint, since this would involve violating article 45 of the Ordinance, or how the author could have been guaranteed immunity from prosecution under article 46 of the Ordinance. A reading of these provisions leads to the conclusion that any complaint regarding the violations suffered by the author and her son would be not only declared inadmissible but also treated as a criminal offence. The author notes that the State party fails to provide an example of any case which, despite the existence of the above-mentioned Ordinance, has led to the effective prosecution of the perpetrators of human rights violations in a similar case.

5.5 With regard to the merits of the communication, the author notes that the State party has simply listed the general scenarios in which the victims of the "national tragedy" might have disappeared. Such general observations do not dispute the allegations made in the present communication. Furthermore, the comments are listed in the same way as in a number of other cases, thus demonstrating the State party's continuing unwillingness to consider such cases individually and to accept its responsibility to the author of this communication, for the suffering that she and her family have endured.

5.6 The author invites the Committee to consider her allegations substantiated given that she is unable to provide additional information in support of her communication, as only the State party has exact information about her son's fate.

5.7 The author considers that the absence of a response on the merits of the communication constitutes a tacit acknowledgement of the accuracy of the facts alleged. The State party's silence constitutes a recognition of failure in its duty to carry out an investigation into the case of enforced disappearance brought to its attention, as otherwise it would have been in a position to provide a detailed response based on the results of the investigations that it should have conducted. With regard to the merits, the author maintains all the allegations set out in her initial communication.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Firstly, the Committee recalls that the Special Rapporteur's decision to examine the admissibility and the merits jointly does not preclude their being considered separately by the Committee. The decision to consider the admissibility and the merits jointly does not mean they must be considered simultaneously. Consequently, before considering any claim contained in a communication, the Human Rights Committee must decide, in accordance with rule 93 of its rules of procedure, whether the communication is admissible under the Optional Protocol to the Covenant.

6.2 Under article 5, paragraph 2 (a), of the Optional Protocol, the Committee must ascertain that the same matter is not being examined under another procedure of international investigation or settlement. The Committee notes that the disappearance of

Nour-Eddine Mihoubi was reported to the Working Group on Enforced or Involuntary Disappearances. However, it recalls that extra-conventional procedures or mechanisms established by the Commission on Human Rights or the Human Rights Council, and whose mandates are to examine and report publicly on human rights situations in specific countries or territories or on cases of widespread human rights violations worldwide, do not generally constitute an international procedure of investigation or settlement within the meaning of article 5, paragraph 2 (a), of the Optional Protocol.[5] Accordingly, the Committee considers that the examination of Nour-Eddine Mihoubi's case by the Working Group on Enforced or Involuntary Disappearances does not render it inadmissible under this provision.

6.3 The Committee notes that, in the State party's view, the author has not exhausted domestic remedies since she did not consider the possibility of bringing the matter before the investigating judge and suing for damages in criminal proceedings under articles 72 and 73 of the Code of Criminal Procedure. The Committee also notes that, according to the State party, the author has simply written letters to political and administrative authorities and petitioned advisory or mediation bodies and representatives of the prosecution service and that she has not, strictly speaking, initiated legal action and seen it through to its conclusion by availing herself of all available remedies of appeal. The Committee notes in this respect that the day after Nour-Eddine Mihoubi's arrest the author contacted the police in Bou Saâda, without success. She subsequently filed a complaint about her son's abduction with the public prosecutor of Bou Saâda, following which it was expressly acknowledged that the Bou Saâda local police had arrested Nour-Eddine Mihoubi and that he had been transferred to the custody of the police of the *wilaya* of Algiers on 7 February 1993. The family also contacted the public prosecutor of Algiers, and repeatedly petitioned representatives of the Government of the State party, the National Human Rights Observatory and its successor body, without success. None of these actions resulted in effective investigations or the prosecution and conviction of those responsible.

6.4 The Committee recalls that the State party has a duty not only to conduct thorough investigations of alleged violations of human rights brought to the attention of its authorities, including in particular enforced disappearances and violations of the right to life, but also to prosecute, try and punish any person assumed to be responsible for such violations.[6] Although the author repeatedly contacted the competent authorities about her son's disappearance, the State party failed to conduct a thorough and effective investigation, despite the fact that serious allegations of enforced disappearance were involved. The State party has also failed to provide sufficient evidence that an effective remedy is de facto available, since Ordinance No. 06-01 of 27 February 2006 continues to be applicable despite the Committee's recommendations that it should be brought into line with the Covenant.[7] Moreover, given the vague wording of articles 45 and 46 of the Ordinance, and in the absence of satisfactory information from the State party about their interpretation and actual enforcement, the author's fears about the effectiveness of filing a complaint are reasonable. The Committee recalls that, for the purposes of admissibility of a communication, the authors must exhaust only the remedies effective against the alleged violation – in the present case, remedies effective against enforced disappearance. Furthermore, recalling its jurisprudence, the Committee considers that to sue for damages for offences as serious as those alleged in the present case cannot be considered a substitute

[5] Communication No. 1781/2008, *Djebrouni v. Algeria*, Views adopted on 31 October 2011, para. 7.2.

[6] See, inter alia, communication No. 1905/2009, *Ouaghlissi v. Algeria*, Views adopted on 26 March 2012, para. 6.4.

[7] Concluding observations of the Human Rights Committee, Algeria, CCPR/C/DZA/CO/3 (12 December 2007), paras. 7, 8 and 13.

for the charges that should have been brought by the State Prosecutor.[8] The Committee therefore concludes that article 5, paragraph 2 (b), of the Optional Protocol is not an obstacle to the admissibility of the communication.

6.5 The Committee considers that the author has sufficiently substantiated her claims insofar as they raise issues under articles 6, 7, 9, 10, 16 and 2 (para. 3) of the Covenant, and therefore proceeds to consider the communication on the merits.

Consideration of the merits

7.1 The Human Rights Committee has considered the present communication in the light of all the information made available to it by the parties, as required under article 5, paragraph 1, of the Optional Protocol.

7.2 The State party has provided general and collective comments on the serious allegations made by the author, and has merely argued that communications incriminating public officials or persons acting on behalf of public authorities in cases of enforced disappearance between 1993 and 1998 should be looked at in the broader context of the sociopolitical and security environment that prevailed in the country during a period in which the Government had to combat terrorism. The Committee observes that the Covenant demands that the State party show concern for the fate of every individual and treat every individual with respect for the inherent dignity of the human being. In addition, the Committee recalls its jurisprudence,[9] according to which the State party may not invoke the provisions of the Charter for Peace and National Reconciliation against persons who invoke provisions of the Covenant or who have submitted or may submit communications to the Committee. Without the amendments recommended by the Committee, Ordinance No. 06-01 appears to promote impunity and therefore cannot, as it currently stands, be considered compatible with the Covenant.[10]

7.3 The Committee notes that the State party has not replied to the author's claims concerning the merits of the case, and recalls its jurisprudence,[11] according to which the burden of proof should not rest solely on the author of a communication, especially given that the author and the State party do not always have the same degree of access to evidence and that often only the State party is in possession of the necessary information. It is implicit in article 4, paragraph 2, of the Optional Protocol that the State party has a duty to investigate in good faith all allegations of violations of the Covenant made against it and its representatives and to provide the Committee with whatever information is available to it.[12] In the absence of any explanations from the State party in this respect, due weight must be given to the author's allegations, provided that they have been sufficiently substantiated.

7.4 The Committee notes that, according to the author, her son has been missing since his arrest on 27 January 1993 and that although the authorities have admitted to arresting him, they have failed to conduct any effective investigation that might shed light on his fate. It notes that, according to the author, the chances of finding Nour-Eddine Mihoubi alive are minimal, and that his prolonged absence suggests that he died while in detention; that incommunicado detention creates an unacceptable risk of violation of the right to life, since victims are at the mercy of their jailers who, by the very nature of the circumstances,

[8] See, inter alia, communication No. 1905/2009, *Ouaghlissi v. Algeria*, para. 6.4.

[9] See, inter alia, communications No. 1781/2008, *Djebrouni v. Algeria*, para. 8.2; and No. 1905/2009, *Ouaghlissi v. Algeria*, supra, note 6, para. 7.2

[10] See the Committee's concluding observations on Algeria, CCPR/C/DZA/CO/3, para. 7 (a).

[11] See inter alia, communication No. 1791/2008, *Boudjemai v. Algeria*, Views adopted on 7 March 2013, para. 8.3.

[12] See communication No. 1297/2004, *Medjnoune v. Algeria*, Views adopted on 14 July 2006, para. 8.3.

are subject to no oversight. The Committee notes that the State party has produced no evidence to refute these allegations. The Committee concludes that the State party has failed in its duty to protect Nour-Eddine Mihoubi's life, in violation of article 6, paragraph 1, of the Covenant.[13]

7.5 The Committee recognizes the degree of suffering involved in being held indefinitely without contact with the outside world. It recalls its general comment No. 20 on article 7, which recommends that States parties should make provision against incommunicado detention. The Committee notes that, according to the author, Nour-Eddine Mihoubi was arrested by police officers from Bou Saâda on 27 January 1993 in Diss (Bou Saâda), at the home of his brother, who was also arrested on the same day. Furthermore, according to fellow prisoners who had since been released, he was subjected to acts of torture at the hands of his jailers at the Châteauneuf detention centre. In the absence of a satisfactory explanation from the State party, the Committee finds multiple violations of article 7 of the Covenant in respect of Nour-Eddine Mihoubi.[14]

7.6 The Committee also takes note of the anguish and distress that the disappearance of Nour-Eddine Mihoubi has caused his mother, the author. It considers that the facts before it disclose a violation of article 7 of the Covenant, with regard to the author.[15]

7.7 With regard to the alleged violation of article 9, the Committee notes the author's claim that Nour-Eddine Mihoubi was arrested on 27 January 1993 by the police, without explanation; that following his arrest, he was detained at the Bou Saâda police station, where he was apparently held for 11 days until he was transferred to the custody of the police of the *wilaya* of Algiers. According to information received subsequently by his family, Nour-Eddine Mihoubi was then transferred to the Châteauneuf detention centre, where he was allegedly detained incommunicado for 18 months and subjected to torture. The authorities of the State party have since failed to provide the family with any information about the fate of Nour-Eddine Mihoubi. Although, according to a letter sent to the family by the National Human Rights Observatory on 12 May 1996, the victim was wanted under an arrest warrant issued by the Special Court on 31 March 1993, that is two months after his arrest, he was not questioned and was not brought before a judicial authority, which would have enabled him to challenge the lawfulness of his detention. Moreover, although the public prosecutor of Bou Saâda acknowledged Nour-Eddine Mihoubi's arrest and detention, the author and her family were not given any official information about the victim's whereabouts or fate. In the absence of a satisfactory explanation from the State party, the Committee finds a violation of article 9 of the Covenant with regard to Nour-Eddine Mihoubi.[16]

7.8 With regard to the complaint under article 10, paragraph 1, the Committee reiterates that persons deprived of their liberty may not be subjected to any hardship or constraint other than that resulting from the deprivation of liberty and that they must be treated with humanity and respect for their dignity. In view of his incommunicado detention and in the

[13] See communication No. 1831/2008, *Larbi v. Algeria*, Views adopted on 25 July 2013, para. 8.4.

[14] See, inter alia, communications No. 1295/2004, *El Awani v. Libyan Arab Jamahiriya*, Views adopted on 11 July 2007, para. 6.5; and No. 1422/2005, *El Hassy v. Libyan Arab Jamahiriya*, Views adopted on 24 October 2007, para. 6.2.

[15] See inter alia, communications No. 1905/2009, *Ouaghlissi v. Algeria*, supra, note 6, para. 7.6; and No. 1781/2008, *Djebrouni v. Algeria*, supra, note 5, para. 8.6.

[16] See, inter alia, communications No. 1905/2009, *Ouaghlissi v. Algeria*, para. 7.7; and No. 1781/2008, *Djebrouni v. Algeria*, para. 8.7.

absence of information provided by the State party in that regard, the Committee finds a violation of article 10, paragraph 1, of the Covenant with regard to Nour-Eddine Mihoubi.[17]

7.9 With regard to the alleged violation of article 16, the Committee reiterates its settled jurisprudence, according to which the intentional removal of a person from the protection of the law for a prolonged period of time may constitute a refusal to recognize that person as a person before the law if the victim was in the hands of the State authorities when last seen and if the efforts of his or her relatives to obtain access to potentially effective remedies, including judicial remedies (Covenant, art. 2, para. 3), have been systematically impeded.[18] In the present case, the Committee notes that the authorities of the State party have failed to provide the family with any information about the fate of Nour-Eddine Mihoubi since his arrest on 27 January 1993, in spite of the numerous requests sent to various authorities. The Committee concludes that Nour-Eddine Mihoubi's enforced disappearance for more than 20 years denied him the protection of the law and deprived him of his right to recognition as a person before the law, in violation of article 16 of the Covenant.

7.10 The author invokes article 2, paragraph 3, of the Covenant, which imposes on States parties the obligation to ensure an effective remedy for all persons whose Covenant rights have been violated. The Committee attaches importance to the establishment by States parties of appropriate judicial and administrative mechanisms for addressing claims of rights violations. It refers to its general comment No. 31 (2004), which states that a State party's failure to investigate allegations of violations could in itself give rise to a separate breach of the Covenant. In the present case, although the victim's family repeatedly contacted the competent authorities regarding Nour-Eddine Mihoubi's disappearance, including judicial authorities such as the prosecutors of Algiers and Bou Saâda, all their efforts proved futile and the State party failed to conduct a thorough and effective investigation into his disappearance, even though he had been arrested by State officials, and they had even acknowledged his arrest. Furthermore, the absence of the legal right to undertake judicial proceedings since the promulgation of Ordinance No. 06-01 implementing the Charter for Peace and National Reconciliation continues to deprive Nour-Eddine Mihoubi and his family of any access to an effective remedy, since the Ordinance prohibits, on pain of imprisonment, the pursuit of legal remedies to shed light on the most serious crimes, such as enforced disappearances.[19]

7.11 The Committee further notes that Nour-Eddine Mihoubi's family began the process of obtaining an official declaration of death, which led to an official recognition of his disappearance on 12 April 2007, pursuant to articles 26 ff. of Ordinance No. 06-01, which provide that once a certificate of disappearance has been issued by the judicial police, a declaration of death may be obtained at the request of the beneficiaries, giving them the right to compensation, to the exclusion of any other form of redress (see paragraph 2.9 above). The Committee notes that the compensation offered is dependent on the recognition, by the family, that the missing family member is deceased. The Committee recalls that the State party has an obligation to carry out thorough and effective investigations of serious violations of human rights, including enforced disappearances, independently of any political "national reconciliation" measures that it might undertake. The Committee considers, in particular, that the provision of compensation must not be

[17] See general comment No. 21 (1992) on article 10, paragraph 3, and, inter alia, communication No. 1780/2008, *Mériem Zarzi v. Algeria*, Views adopted on 22 March 2011, para. 7.8.

[18] Communication No. 1905/2009, *Ouaghlissi v. Algeria*, supra, note 6, para.7.8.

[19] CCPR/C/DZA/CO/3, para. 7.

made contingent upon the issuance of a declaration of death in respect of a disappeared person in a civil procedure.[20]

7.12 In the light of the foregoing, the Committee finds that the facts before it reveal a violation of article 2 (para. 3), read in conjunction with articles 6, 7, 9, 10 and 16 of the Covenant, with regard to Nour-Eddine Mihoubi, and of articles 2 (para. 3), read in conjunction with article 7 of the Covenant with regard to the author.

8. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the information before it discloses violations by the State party of articles 6, 7, 9, 10, 16, and article 2 (para. 3) read in conjunction with articles 6, 7, 9, 10 and 16, of the Covenant with regard to Nour-Eddine Mihoubi. The Committee also finds a violation of articles 7, and article 2 (para. 3) read in conjunction with article 7, of the Covenant with regard to the author.

9. In accordance with article 2, paragraph 3, of the Covenant, the State party is under an obligation to guarantee Nour-Eddine Mihoubi's family an effective remedy, including by: (a) conducting a thorough and effective investigation into Nour-Eddine Mihoubi's disappearance; (b) providing his family with detailed information about the results of its investigation; (c) releasing him immediately if he is still being detained incommunicado; (d) in the event that Nour-Eddine Mihoubi is deceased, handing over his remains to his family; (e) prosecuting, trying and punishing those responsible for the violations committed; and (f) providing adequate compensation to Nour-Eddine Mihoubi's family for the violations suffered, and also to Nour-Eddine Mihoubi if he is still alive. Notwithstanding the terms of Ordinance No. 06-01, the State party should ensure that it does not impede enjoyment of the right to an effective remedy by victims of crimes such as torture, extrajudicial killings and enforced disappearances. The State party is also under an obligation to take steps to prevent similar violations in the future.

10. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether or not there has been a violation of the Covenant and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory or subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy when a violation has been established, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the present Views and to have them widely disseminated in the official languages of the State party.

[Adopted in English, French and Spanish, the French text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

[20] See communication No. 1798/2008, *Azouz v. Algeria*, Views adopted on 25 July 2013, para. 8.11.

Appendix

Individual opinion by Mr. Fabián Omar Salvioli and Mr. Víctor Manuel Rodríguez-Rescia

1. We share the opinion of the Committee and the conclusions it has reached in the *Mihoubi v. Algeria* case (communication No. 1874/2009). Nevertheless, we believe that the Committee should have indicated that, by its adoption of Ordinance No. 06-01, which contains provisions, particularly article 46, which are clearly incompatible with the Covenant, the State has failed to comply with the general obligation set forth in article 2, paragraph 2 of the Covenant. The Committee should also have found a violation of article 2, paragraph 2, read in conjunction with other substantive provisions of the Covenant. We consider that in the redress ordered, the Committee should have recommended that the State party bring Ordinance No. 06-01 in line with the provisions of the Covenant. Lastly, we are convinced that the obligation for the family of the victim to apply for a declaration of death constitutes cruel and inhuman treatment as described in article 7 of the Covenant and that the Committee should have mentioned that in its Views.

2. There is currently a difference of opinion within the Committee over the application of the *iura novit curia* principle, which authorizes an international body to apply the law in the manner it considers appropriate in accordance with the proven facts of the case and regardless of the legal claims of the parties.

3. The *iura novit curia* principle has been applied by the international bodies for almost a century: it was introduced by the Permanent Court of International Justice, the predecessor of the International Court of Justice,[21] and then taken up by the European Court of Human Rights[22] as established case law,[23] and both precedents have established the current practice of other bodies such as the Inter-American Commission and Court of Human Rights[24] and the African Commission on Human and Peoples' Rights.[25]

4. The position that it is not feasible to adopt the *iura novit curia* principle for individual cases before the Committee disregards the fact that the Committee's case law provides several precedents in which the Committee clearly applied articles that had not been invoked by the parties (*iura novit curia*); we have cited some of these cases in previous individual opinions.[26]

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[21] Permanent Court of International Justice, the case of the S.S. "Lotus", 1927, Series A No. 10, page 31.

[22] European Court of Human Rights, *Handyside v. the United Kingdom*, 7 December 1976, Series A No. 24, para. 41.

[23] European Court of Human Rights, *Powell and Rainer v. the United Kingdom*, 21 February 1990, Series A No. 172, para. 29; *Guerra and others v. Italy*, 19 February 1998, Reports of Judgments and Decisions 1998-I, para. 44; *Scoppola v. Italy (2)*, [GC] No. 10249/03, 17 September 2009, para. 54; and more recently *G.R. v. the Netherlands*, No. 22251/07, 10 January 2012, paras. 35–36.

[24] Inter-American Court of Human Rights, *Godínez Cruz*; Series C No. 5, judgment of 20 January1989, para. 172. The Court applied the same principle in all of its subsequent judgments.

[25] See, for example, *Antoine Bissangou v. the Republic of Congo*, African Commission on Human and Peoples' Rights, communication No. 253/2002 (2006); the complainant alleged violations of articles 2, 3 and 21 (2); the Commission found that there had been violations of articles 3, 7 and 14 of the African Charter of Human and Peoples' Rights.

[26] Human Rights Committee: communication No. 1390/2005, *Koreba v. Belarus*, Views adopted on 25 October 2010; communication No. 1225/2003, *Eshonov v. Uzbekistan*, Views adopted on 22 July

5. Consequently, the *iura novit curia* principle is proper to the practice of the international judicial and quasi-judicial bodies at the global (United Nations) and regional (European, inter-American and African) levels; the Human Rights Committee should not abandon this prerogative and adopt in its place practices more proper to national civil or common law systems, which follow a completely different rationale from that governing the operation of the international human rights systems.

6. It is not a question either of utility or of convenience, criteria which should be alien to the work of an international human rights body. The issue is the proper application of the law. In particular, when the facts of the case described and confirmed show that there was a violation, the Committee must set the case within the proper legal framework.

7. By proceeding in the same way as the international human rights bodies and applying the *iura novit curia* principle, the Committee will not only establish a consistent case law in response to the same proven facts (which is not only desirable, but logical), it will avert the risk of becoming a prisoner of possible political speculation by the parties to a dispute.

8. In the case at hand there are various proven facts which entail violations of the Covenant. The Committee has correctly identified several of them, but has omitted to identify the adoption of a norm which is incompatible with the Covenant (constituting non-compliance by the State party with the general obligation under article 2, paragraph 2, and in consequence affecting various substantive rights) as one of them.

9. It is the established practice of the Committee to find violations of article 2, paragraph 3, of the Covenant, and it does so even in the case of the present communication; in legal terms, there is no reasonable explanation of why it is unable to perform the same interpretation in respect of article 2, paragraph 2.

10. The absence of a suitable legal framework is not a purely theoretical or academic matter; it also has an impact on remedies. Although welcome advances in this area have been made in recent years, in our view the forms of remedy recommended in such cases in the past are incomplete. In the case at hand, the Committee has failed to recommend, as a means of redress, the adjustment by law of Ordinance No. 06-01 to the provisions of the Covenant, which is indispensable to guarantee that such incidents do not occur again.

11. In conclusion, the Committee should have specifically indicated that to oblige the family of a disappeared person to acknowledge the person's death as a means of obtaining compensation constitutes cruel and inhuman treatment, and consequently a violation of article 7 of the Covenant. Instead, the Committee addresses the issue as a violation of the right to redress for the victims of human rights violations, and consequently finds a violation of article 2, paragraph 3, read in conjunction with article 7 (Views, paras. 7.11 and 7.12).

12. The author restricts herself to stating that the family requested a declaration of death pursuant to Ordinance No. 06-01 of 27 February 2006 (Views, para. 2.9) but fails to

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2010, para. 8.3; communication No. 1206/2003, *R.M. and S.I. v. Uzbekistan*, Views adopted on 10 March 2010, paras. 6.3 and 9.2, resulting in a finding of non-violation; communication No. 1520/2006, *Mwamba v. Zambia*, Views adopted on 10 March 2010; communication No. 1320/2004, *Pimentel et al. v. the Philippines*, Views adopted on 19 March 2007, paras. 3 and 8.3; communication No. 1177/2003, *Ilombe and Shandwe v. the Democratic Republic of the Congo*, Views adopted on 17 March 2006, paras. 5.5, 6.5 and 9.1; communication No. 1044/2000, *Shukurova v. Tajikistan*, Views adopted on 17 March 2006, para. 3; and communication No. 973/2001, *Khalilova v. Tajikistan*, Views adopted on 30 March 2005, para 3.7.

identify this fact as a violation of her rights, since she makes no reference to it either in the complaint or in her comments on the State party's submission.

13. Nonetheless — we repeat the point — the Committee addresses this fact in legal terms in paragraphs 7.11 and 7.12, as a result of which in this same case the Committee has applied law that was not invoked by the parties, in other words, the *iura novit curia* principle.

14. We do not disagree with the fact that the Committee has applied this principle to this part of the communication, but we believe that it would have been more appropriate from a legal perspective to have found that the requirement for the family to acknowledge the death of one of its members who has been a victim of enforced disappearance is a violation of article 7 of the Covenant, since it undoubtedly constitutes cruel and inhuman treatment.

[Done in English, French and Spanish, the Spanish text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

Individual opinion by Mr. Gerald L. Neuman

1. I fully concur with the Views of the majority on this communication, both concerning what it decides and what it does not decide. I write here in order to give an explicit response, from my own perspective, to a dissenting argument in the separate opinion of my colleagues Mr. Fabián Salvioli and Mr. Víctor Rodríguez-Rescia. For the sake of brevity, I will assume that the reader is familiar with the Covenant and its interpretation, rather than spelling out the details that would be useful for an audience of general readers.

2. Since 2009, separate opinions have repeatedly urged the Committee to change its long-standing practice, and to include in its Views findings that a State party has violated article 2, paragraph 2, of the Covenant. This proposed conclusion could be understood either as a violation of article 2, paragraph 2, standing alone, or as a violation of article 2, paragraph 2, in conjunction with one or more substantive rights enumerated in articles 6 through 27 of the Covenant.

3. To my mind, these arguments do not make clear what practical value for the protection of human rights either version of this proposed change would serve.

4. I am aware that the Inter-American Court of Human Rights generally expresses its findings of violations of substantive provisions of the American Convention on Human Rights in a compound fashion, as a violation of the relevant substantive articles in relation to either article 1, paragraph 1, of the American Convention or article 2 of the American Convention (or both). The Inter-American Court may have had its own reasons for adopting this format in its first judgment, and maintaining it over time. The Human Rights Committee, in contrast, has been able since its own early years to find substantive provisions of the Covenant directly violated, without the need for an ancillary citation to article 2, paragraph 1 or paragraph 2, which would be the equivalent.

5. If the Committee's existing approach to article 2, paragraph 2, prevented the Committee from being able to address the contribution of particular laws in a State party to the violation at hand, then modifying that approach could serve a useful purpose. But, as is evident from the Views in the present case, the Committee is able to examine the effect of laws on victims before it.

6. If the Committee's existing approach to article 2, paragraph 2, prevented the Committee from being able to recommend changes to the legal framework in a State party that would protect the victim before it or similarly situated persons from future violations, then modifying that approach could serve a useful purpose. But, as is evident from the paragraph 9 of the Views in the present case, the Committee is able to make such recommendations. I may add that the Committee's phrasing of its recommendation in the penultimate sentence of paragraph 9 results from careful attention to the situation in the particular State party, and not from some abstract general practice.

7. Changing the Committee's approach not only seems to lack advantages, but would also involve disadvantages. The unnecessary addition of more abstract violations or more phrases of the form "article 2, paragraph 2, in conjunction with articles 6, 7, and 10, paragraph 1" would further impair the legibility of the Committee's Views, which are complicated enough already. Moreover, given the volume of communications that the Committee receives and the constraints on its meeting time, debates on whether or not a finding regarding article 2, paragraph 2, should be added in a particular case would reduce the time available for more productive discussions of other issues, or for giving more victims earlier decisions on their communications.

8. If the suggestion is to find violations of article 2, paragraph 2, taken in isolation, then adopting it would be inconsistent with the Committee's general practice of not finding isolated violations of any sub-provision of article 2 in communications. This practice helps ensure that communications concern victims who have been concretely affected with regard to specific rights, rather than persons objecting abstractly to the way a State party implements the Covenant.

9. It is also noteworthy that these separate opinions combine the call for findings of violation of article 2, paragraph 2, with a broad understanding of the doctrine "*iura novit curia*" as a duty of the Committee to find violations that arise on the facts, regardless of whether the parties to the communication have addressed them. To my mind, the Committee is properly cautious in its application of this doctrine to reformulate the claims made by authors. In the context of article 2, paragraph 2, it should also be taken into account that the laws of States parties are frequently written in languages that members of the Committee cannot read, and that the operative interpretation of a statute is not always apparent from its text. Information and argumentation from the parties can be very important to the Committee in evaluating how a State party's laws may have contributed to the violation at hand, and what may need to be changed in order to bring the legal framework into compliance with the Covenant.

10. Furthermore, recommending changes to a State party's laws generally implicates the interests of third parties who cannot participate in the proceedings on the individual communication. Unlike the Inter-American Court, this Committee operates under rules of confidentiality that deny the general public knowledge of pending cases and the opportunity to provide alternative perspectives to the Committee. At the same time, unlike the Inter-American Court, this Committee engages in a separate process of public examination of State parties' laws and practices under the periodic reporting procedure. I mention this, not to claim that evaluation of a statute should occur only in the reporting procedure, but to point out differences that may justify greater caution on the part of the Committee in addressing a statute in the context of an individual communication.

[Done in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]